



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1996

Ms. Donna Garcia Davidson
Assistant General Counsel
Office of the Governor
P. O. Box 12428
Austin, Texas 78711

OR96-1883

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101242.

The Office of the Governor (the "Governor's Office") has received a request for copies of the following categories of information:

- (1) Any and all memos, letters, e-mail, or other communication from the Governor's Office concerning involvement of the Texas Department of Human Services and/or the Texas Workforce Commission in the Texas Integrated Enrollment Systems project ("TIES") contract or bid.
- (2) Summaries of policy statements by the Governor or Governor's policy council concerning TIES.
- (3) Copy of cost analysis report and all accompanying material submitted to the Governor's Office by David M. Griffith and Associates, before analysis by the Governor's budget office staff.

You believe that the Governor's Office may withhold all of the submitted information from required public disclosure based on section 552.104 of the Government Code. Additionally, you contend that some of the submitted information is excepted from required public disclosure pursuant section 552.111 of the Government Code. However, you state that "all other documents responsive to this request will be released to the requestor." You have submitted representative samples of the documents the Governor's

Office believes are exempt from required public disclosure.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

We first address your assertion that section 552.104 of the Government Code excepts all three categories of the submitted information from required public disclosure. Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. The information you seek to withhold relates to a cost baseline for the TIES project, in preparation towards implementing the program. We conclude that the Governor's Office may withhold from public disclosure most of the information at issue based on section 552.104 of the Government Code. We note, however, that there are some documents at issue that may not be withheld from disclosure under section 552.104 of the Government Code. Since you have not raised any other exception with regards to the release of these records, we have tagged the documents which you must release.

Next, we address your assertion that section 552.111 excepts some of the submitted information. You argue that the first category of the requested records is protected from disclosure by section 552.111 of the Government Code. These particular documents have been marked by your office with the type of information that you assert may be withheld pursuant to 552.111 of the Government Code. Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

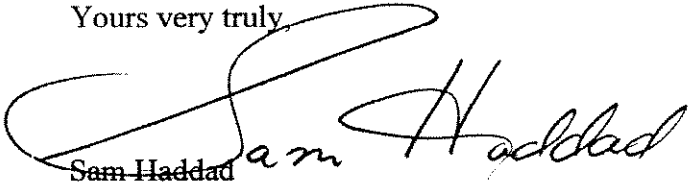
This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). The exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency's decision-making

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

processes. *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.)). Section 552.111, however, does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 (1993) at 4-5. After reviewing the materials, we agree that some of the information you have submitted may be withheld pursuant to section 552.111. Accordingly, we have marked and tagged those documents that contain information which may be withheld from required public disclosure under section 552.111. The remaining information may not be withheld from required public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref: ID# 101242

Enclosures: Submitted documents

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(w/o enclosures)